

EXHIBIT A



April 18, 2019

VIA SEC ONLINE FORM

U.S. Securities and Exchange Commission

Barry Walters, Director

Office of FOIA/PA Operations

100 F Street NE, Mail Stop 2456

Washington, DC 20549

Fax: (202) 772-9337

Re: Freedom of Information Act Request: Records Concerning Shareholder Proposals on Climate Change and Climate Risk

Dear Director Walters:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, as amended (“FOIA”), and the SEC regulations at 17 C.F.R. § 200.80, *et seq.* This request is sent to you because you were identified as the proper person to receive such requests. If this request should be directed to another person, please forward this request to that person and let us know their identity.

Sierra Club is the nation’s oldest grassroots environmental organization. It has more than 3.5 million members and supporters nationwide. Sierra Club is dedicated to the protection and preservation of the natural and human environment. Sierra Club’s purpose is to explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth’s ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.

Sierra Club is a leading non-governmental organization seeking to educate and mobilize the public on the issues of climate change, fossil fuel energy and clean energy. The Sierra Club also has a long-standing interest in government accountability and transparency.

REQUESTED RECORDS¹

Sierra Club requests the following records in the possession, custody, or control of the U.S. Securities and Exchange Commission (“SEC”) for the time period starting from **December 1, 2016 through the agency’s search for records:**

1. All records of communication with any party external to SEC, mentioning, describing, containing, or relating in any way to the topics listed below. We are seeking all such records sent to, sent from, produced by, or in the possession of any present or former agency officials or staff, including but not limited to Chairman Jay Clayton; Chief of Staff to the Chairman, Lucas Moskowitz; Commissioner Elad L. Roisman; Commissioner Hester M. Pierce; Director, Division of Corporation Finance, William Hinman; Chief Counsel and Associate Director, Division of Corporation Finance, David Fredrickson; Special Counsel, Division of Corporation Finance, M. Hughes Bates; and Attorney-Adviser, Division of Corporation Finance, Kasey L. Robinson. The topics subject to this request include the following:

- A. Shareholder proposals on climate change, greenhouse gases, or the Paris Climate Agreement
- B. Rule 14a-8 in general
- C. Rule 14a-8(i)(7)
- D. “Micromanagement” as that term is used at the SEC
- E. Staff legal bulletins 14I and 14J

2. All non-exempt internal records including but not limited to memos, materials, decision memos for no-action letters, correspondence, phone logs, and visitor meeting sign-in sheets, mentioning, describing, containing, or relating in any way to the topics listed below. We are seeking all such records sent to, sent from, produced by, or in the possession of any present or former agency officials or staff, including but not limited to Chairman Jay Clayton; Chief of Staff to the Chairman, Lucas Moskowitz; Commissioner Elad L. Roisman; Commissioner Hester M. Pierce; Director, Division of Corporation Finance, William Hinman; Chief Counsel and Associate Director, Division of Corporation Finance, David Fredrickson; Special Counsel, Division of Corporation Finance, M. Hughes Bates; and Attorney-Adviser, Division of Corporation Finance, Kasey L. Robinson. The topics subject to this request include the following:

- A. Shareholder proposals on climate change, greenhouse gases, or the Paris Climate Agreement

¹ “Records” means information of any kind, including writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), letters, memoranda, correspondence, notes, applications, completed forms, studies, reports, reviews, guidance documents, policies, telephone conversations, telefaxes, emails, documents, databases, drawings, graphs, charts, photographs, minutes of meetings, electronic and magnetic recordings of meetings, and any other compilation of data from which information can be obtained. Without limitation, the records requested include records relating to the topics described below at any stage of development, whether proposed, draft, pending, interim, final or otherwise. All of the foregoing are included in this request if they are in the possession of or otherwise under the control of U.S. Securities and Exchange Commission (“SEC”).

- B. Rule 14a-8 in general
- C. Rule 14a-8(i)(7)
- D. “Micromanagement” as that term is used at the SEC
- E. Staff legal bulletins 14I and 14J

Should you decide to invoke a FOIA exemption with regard to any of the requested records, please include in your full or partial denial letter sufficient information for the Sierra Club to appeal the denial. To comply with legal requirements, the following information must be included:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and deliver the non-exempt portions of such records to my attention at the address below within the statutory time limit. 5 U.S.C. § 552(b).

FORMAT OF REQUESTED RECORDS

Under FOIA, you are obligated to provide records in a readily accessible electronic format and in the format requested. *See, e.g.,* 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”).

Please provide all records in an electronic .pdf format that is text-searchable and OCR-formatted. Portfolios and embedded files within files are not readily accessible. Please do not provide the records in a single, or “batched,” .pdf file.

RECORD DELIVERY

We appreciate a prompt determination on the requested records. As mandated in FOIA, we anticipate a reply within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i); 17 C.F.R. § 200.80(d)(2). Please email copies of the requested records to the e-mail address below. Please deliver documents that are not available in an electronic format to the physical address below. Failure to comply within the statutory timeframe may result in Sierra Club filing an action before the relevant U.S. District Court to ensure timely receipt of the requested materials.

Deliver electronic documents to:

Katie Chamberlain
katie.chamberlain@sierraclub.org

Deliver other documents to:

Katie Chamberlain
2101 Webster Street, Suite 1300
Oakland, CA 94612

Please send documents on a rolling basis. SEC's search for—or deliberations concerning—certain records should not delay the production of others that SEC has already retrieved and elected to produce. *See generally* 17 C.F.R. § 200.80(d)(2) (describing response deadlines).

FEE WAIVER REQUEST

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 17 C.F.R. § 200.80(g)(12). Sierra Club is the nation's oldest grassroots environmental organization with more than 3.5 million members and supporters nationwide. Sierra Club is a leading non-governmental organization seeking to educate and mobilize the public on issues of environmental protection including climate change, fossil fuel energy, clean energy and clean water. Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment, and has routinely received fee waivers under FOIA.²

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to." *U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). In order to provide public access to this information, FOIA's fee waiver provision

² For a recent example, see FOIA Request Reference No. EPA-HQ-2017-8568 (fee letter waiver received June 28, 2017).

requires that “[d]ocuments shall be furnished without any charge or at a [reduced] charge,” if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as Sierra Club access to government records without the payment of fees. *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984) (fee waiver provision intended “to prevent government agencies from using high fees to discourage certain types of requesters and requests,” which are “consistently associated with requests from journalists, scholars, and non-profit public interest groups.”).

As explained below, this FOIA request satisfies the factors listed in SEC’s governing regulations for waiver or reduction of fees, as well as the requirements for a fee waiver under the FOIA statute – that “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii), *see also* 17 C.F.R. § 200.80(g)(12).

1. The subject matter of the requested records specifically concerns identifiable “operations and activities of the government.”

The requested records relate to SEC’s activities regarding shareholder proposals relating to climate change and climate risk. These activities are “identifiable operations or activities of the government.” The Department of Justice Freedom of Information Act Guide expressly concedes that “in most cases records possessed by a federal agency will meet this threshold” of identifiable operations or activities of the government. There can be no question that this is such a case.

2. The disclosure of the requested documents would be meaningfully informative and “likely to contribute to an understanding of Federal government operations or activities.”

The FOIA Guide makes it clear that, in the Department of Justice’s view, the “likely to contribute” determination hinges in substantial part on whether the requested documents provide information that is not already in the public domain. The requested records are “likely to contribute” to an understanding of your agency’s activities and decisions because they are not otherwise in the public domain and are not accessible other than through a FOIA request. This information will facilitate meaningful public participation in the decision-making process, therefore fulfilling the requirement that the documents requested be “meaningfully informative” and “likely to contribute” to an understanding of your agency’s decision-making process with regard to shareholder proposals relating to climate change and climate risk.

3. The disclosure would contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons.

Sierra Club has longstanding experience and expertise in the subject area of FOIA requests, including issues related to government accountability and transparency. Sierra Club also devotes significant resources to advocacy concerning climate change including corporate advocacy. This request will contribute to an understanding of the activities that properly fall within the SEC's role of overseeing "corporate disclosure of important information to the investing public."³

Sierra Club disseminates the information it receives through FOIA requests in a variety of ways, such as: analysis and distribution to the media, distribution through publication and mailing, posting on its website, emailing and list serve distribution to our members across the U.S., and via public meetings and events. Every year the Sierra Club website receives 26,298,200 unique visits and over 30 million page views; on average, the site gets 72,049 visits per day. Sierra Magazine is a bi-monthly magazine with a printed circulation of approximately 650,000 copies. Sierra Club Insider, an electronic newsletter, is sent to nearly 3.5 million people twice a month. In addition, Sierra Club disseminates information obtained by FOIA requests through comments to administrative agencies, and where necessary, through the judicial system.⁴

Sierra Club intends to share the information received from this FOIA request with the general public, our impacted members across the country, the media and our allies who share a common interest in the operations of the SEC particularly around shareholder proposals relating to climate change and climate risk.

Sierra Club unquestionably has the "specialized knowledge" and "ability and intention" to disseminate the information requested in the broad manner outlined above, and to do so in a manner that contributes to the understanding of the "public-at-large."

³ *What We Do*, U.S. Securities and Exchange Commission, (June 10, 2013), <https://www.sec.gov/Article/whatwedo.html#org>

⁴ For example, Sierra Club sought information about coal export and permitting activities in Oregon via a state public records act request at the Port of Coos Bay. All correspondence is published online and has received extensive media attention from press releases on the subject. See Sierra Club Challenges Dirty and Dangerous Fossil Fuel Exports in Oregon, <http://content.sierraclub.org/environmentallaw/lawsuit/2013/sierra-club-challenges-dirty-and-dangerous-fossil-fuel-exports-oregon>. Sierra Club also recently publicized the results of its FOIA requests regarding agency job freezes, a story that was picked up by the Washington Post. Alexander Rony, *Trump Admin Policy Leaves 700 CDC Jobs Vacant*, The Planet, <http://www.sierraclub.org/planet/2017/05/trump-admin-policies-leave-700-cdc-jobs-vacant>; Lena H. Sun, *Nearly 700 vacancies at CDC because of Trump administration's hiring freeze*, The Washington Post, https://www.washingtonpost.com/news/to-your-health/wp/2017/05/19/nearly-700-vacancies-at-cdc-because-of-trump-administration-hiring-freeze/?utm_term=.6c2e70d8581e.

4. The disclosure would contribute “significantly” to public understanding of government operations or activities.

The records requested will contribute to the public understanding of the government’s role, or their “operations and activities” associated with shareholder proposals handled by the SEC in connection with the issues of climate change and climate risk. The disclosure of the requested records is essential to the public’s understanding of SEC’s operations and activities. After disclosure of these records, the public understanding of SEC’s activities will be significantly enhanced. The requirement that disclosure must contribute “significantly” to the public understanding is therefore met.

5. The requester has no commercial interest that would be furthered by the requested disclosure.⁵

Sierra Club has no commercial interest in the requested records. Nor does it have any intention to use these records in any manner that “furthers a commercial, trade, or profit interest” as those terms are commonly understood. Sierra Club is a nonprofit, tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of Sierra Club’s mission to inform the public on matters of vital importance to the environment and public health.

Sierra Club respectfully requests that SEC waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A) because the public will be the primary beneficiary of this requested information. In the event that your agency denies a fee waiver,⁶ please send a written explanation for the denial. Please do not incur expenses beyond \$250 without first contacting our office for explicit authorization.

Thank you for your cooperation. If you find that this request is unclear in any way please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply.

⁵ Because Sierra Club has no commercial interest, the Club also satisfies the final factor for a fee waiver, which compares the magnitude of an identified commercial interest to the public interest in disclosure.

⁶ With the award-winning Sierra magazine and its extensive use of blogs to communicate with the public, Sierra Club would also be eligible for a fee waiver as a media requestor. 5 U.S.C. § 552(a)(4)(A)(ii); 17 C.F.R. § 200.80(g)(12)(ii)(C); *see also* 17 C.F.R. § 200.80(g)(2)(vi) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”

5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public).

/s/ Katie Chamberlain

Katie Chamberlain

Legal Assistant

2101 Webster Street, Suite 1300

Oakland, CA 94612

katie.chamberlain@sierraclub.org

(415) 977-5745

EXHIBIT B



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

April 19, 2019

Ms. Katie Chamberlain
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **19-01844-FOIA**

Dear Ms. Chamberlain:

This letter is an acknowledgment of your FOIA request dated and received in this office on April 19, 2019, regarding Sierra Club, Shareholder Proposals Form from 12/01/2016 to present.

Your request has been assigned tracking number 19-01844-FOIA. Your request will be assigned to a Research Specialist for processing and you will be notified of the findings as soon as possible. If you do not receive a response after thirty business days from when we received your request, you have the right to seek dispute resolution services from an SEC FOIA Public Liaison or the Office of Government Information Services (OGIS). A list of SEC FOIA Public Liaisons can be found on our agency website at <https://www.sec.gov/oso/contact/foia-contact.html>. OGIS can be reached at 1-877-684-6448 or Archives.gov or via email at ogis@nara.gov.

In the interim, if you have any questions about your request, you may contact this office by calling (202) 551-7900, or sending an e-mail to foiapa@sec.gov. Please refer to your tracking number when contacting us.

For additional information, please visit our website at www.sec.gov and follow the FOIA link at the bottom.

Sincerely,

Office of FOIA Services

EXHIBIT C



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

April 23, 2019

Ms. Katie Chamberlain
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **19-01844-FOIA**

Dear Ms. Chamberlain:

This letter is in reference to your request, dated April 18, 2019 and received in this office on April 19, 2019, for access to all records of communication with any party external to SEC and non-exempt internal records including but not limited to memos, materials, decision memos for no-action letters, correspondence, phone logs, and visitor meeting sign-in sheets, mentioning, describing, containing, or relating in any way to the topics listed below, from December 1, 2016 through the agency's search for records.

- A. Shareholder proposals on climate change, greenhouse gases, or the Paris Climate Agreement
- B. Rule 14a-8 in general
- C. Rule 14a-8(i)(7)
- D. "Micromanagement" as that term is used at the SEC
- E. Staff legal bulletins 14I and 14J

You requested a fee waiver of all costs associated with your request. We may waive or reduce search, review, and duplication fees if (A) disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and (B) disclosure is not primarily in the commercial interest of the requester, 5 U.S.C. § 552(a)(4)(iii).

Ms. Katie Chamberlain
April 23, 2019
Page Two

19-01844-FOIA

While SEC grants waivers of FOIA fees where appropriate, we are also obligated to safeguard the public treasury by not granting waivers except as provided by the FOIA. As a requester, you bear the burden under the FOIA of showing that the fee waiver requirements have been met. Based on my review of your request, I determined that your fee waiver request satisfies these requirements. Therefore, I am granting your request for a fee waiver.

We are consulting with other SEC staff regarding your request. As soon as we complete our consultation, we will notify you of our findings.

If you have any questions, please contact Frank Mandic of my staff at mandicf@sec.gov or (202) 559-5083. You may also contact me at foiapa@sec.gov or (202) 551-7900. You may also contact the SEC's FOIA Public Service Center at foiapa@sec.gov or (202) 551-7900. For more information about the FOIA Public Service Center and other options available to you please see the attached addendum.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Katilius". The signature is fluid and cursive, with a large initial "L" and a stylized "K".

Lizzette Katilius
FOIA Branch Chief

Enclosure

ADDENDUM

For further assistance you can contact a SEC FOIA Public Liaison by calling (202) 551-7900 or visiting <https://www.sec.gov/oso/help/foia-contact.html>.

SEC FOIA Public Liaisons are supervisory staff within the Office of FOIA Services. They can assist FOIA requesters with general questions or concerns about the SEC's FOIA process or about the processing of their specific request.

In addition, you may also contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. OGIS can be reached at 1-877-684-6448 or via e-mail at ogis@nara.gov. Information concerning services offered by OGIS can be found at their website at [Archives.gov](https://www.archives.gov). Note that contacting the FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an administrative appeal.

EXHIBIT D



Katie Chamberlain <katie.chamberlain@sierraclub.org>

19-01844-FOIA

4 messages

Katilius, Lizzette <KatiliusL@sec.gov>

Fri, May 17, 2019 at 6:23 AM

To: "Katie.Chamberlain@sierraclub.org" <Katie.Chamberlain@sierraclub.org>

Cc: "Mandic, Frank" <MandicF@sec.gov>

Ms. Chamberlain, please call me to discuss your request (attached to this email and copy and pasted below).

You asked for all records since December 1, 2016, with any party external to SEC sent to/from or in the possession of any present or former agency officials or staff, including but not limited to:

1. Chairman Jay Clayton;
2. Chief of Staff to the Chairman, Lucas Moskowitz;
3. Commissioner Elad L. Roisman;
4. Commissioner Hester M. Peirce;
5. Director, Division of Corporation Finance, William Hinman;
6. Chief Counsel and Associate Director, Division of Corporation Finance, David Fredrickson;
7. Special Counsel, Division of Corporation Finance, M. Hughes Bates; and
8. Attorney-Adviser, Division of Corporation Finance, Kasey L. Robinson

On the topics below:

- A. Shareholder proposals on climate change, greenhouse gases, or the Paris Climate Agreement
- B. Rule 14a-8 in general
- C. Rule 14a-8(i)(7)

D. "Micromanagement" as that term is used at the SEC

E. Staff legal bulletins 14I and 14J

Thank you,

Lizzette

Lizzette Katilius

U.S. Securities and Exchange Commission

Office of FOIA Services, Branch Chief

202-551-7910

<https://www.sec.gov/page/foia>

 **Request Description (007).pdf**
542K

Katie Chamberlain <katie.chamberlain@sierraclub.org>

Fri, May 17, 2019 at 9:32 AM

To: "Katilius, Lizzette" <KatiliusL@sec.gov>

Cc: "Mandic, Frank" <MandicF@sec.gov>

Hello,

Thanks for following up on this request. Can we give you a call on Monday to discuss further? What time would work best for you?

Thank you,

Katie

[Quoted text hidden]

--

| **Katie Chamberlain**



Legal Assistant
Sierra Club Environmental Law Program
2101 Webster St., Suite 1300
Oakland, CA 94612
Phone: (415) 977-5745
Fax: (510) 208-3140

CONFIDENTIAL LEGAL COMMUNICATION/WORK PRODUCT

This e-mail may contain privileged and confidential attorney-client communications and/or confidential attorney work product. If you receive this e-mail inadvertently, please notify me and delete all versions from your system. Thank you.

Katilius, Lizzette <KatiliusL@sec.gov>
To: Katie Chamberlain <katie.chamberlain@sierraclub.org>
Cc: "Mandic, Frank" <MandicF@sec.gov>

Fri, May 17, 2019 at 9:37 AM

Monday is fine. If it works for you, any time before 3 pm, east coast time.

Thanks,

[Quoted text hidden]

Katie Chamberlain <katie.chamberlain@sierraclub.org>
To: "Katilius, Lizzette" <KatiliusL@sec.gov>
Cc: "Mandic, Frank" <MandicF@sec.gov>

Fri, May 17, 2019 at 9:45 AM

Great - we'll give you a call Monday before 3pm ET.

Thank you,
Katie

[Quoted text hidden]

EXHIBIT E



Katie Chamberlain <katie.chamberlain@sierraclub.org>

RE: 19-01844-FOIA

Katilius, Lizzette <KatiliusL@sec.gov>

Mon, May 20, 2019 at 10:51 AM

To: "Katie.Chamberlain@sierraclub.org" <Katie.Chamberlain@sierraclub.org>

Cc: "Mandic, Frank" <MandicF@sec.gov>

Ms. Chamberlain, this is to summarize what we discussed in the phone call a few minutes ago. The discussion focused on the search terms for topics A – E, below. You clarified that item D was in connection to B and C. Given that, we will conduct a records search of A, B, C, and E.

- A. Shareholder proposals on climate change, greenhouse gases, or the Paris Climate Agreement
- B. Rule 14a-8 in general
- C. Rule 14a-8(i)(7)
- D. “Micromanagement” as that term is used at the SEC
- E. Staff legal bulletins 14I and 14J

You also indicated that you may add additional individuals to your request. Please let me know as soon as possible once you have identified the names.

If I have misstated anything please contact me. Otherwise, we will proceed with processing your request.

Thank you,

Lizzette

Lizzette Katilius

U.S. Securities and Exchange Commission

Office of FOIA Services, Branch Chief

202-551-7910

<https://www.sec.gov/page/foia>

From: Katilius, Lizzette
Sent: Friday, May 17, 2019 9:24 AM
To: 'Katie.Chamberlain@sierraclub.org' <Katie.Chamberlain@sierraclub.org>
Cc: Mandic, Frank <MandicF@sec.gov>
Subject: 19-01844-FOIA

Ms. Chamberlain, please call me to discuss your request (attached to this email and copy and pasted below).

You asked for all records since December 1, 2016, with any party external to SEC sent to/from or in the possession of any present or former agency officials or staff, including but not limited to:

1. Chairman Jay Clayton;
2. Chief of Staff to the Chairman, Lucas Moskowitz;
3. Commissioner Elad L. Roisman;
4. Commissioner Hester M. Peirce;
5. Director, Division of Corporation Finance, William Hinman;
6. Chief Counsel and Associate Director, Division of Corporation Finance, David Fredrickson;
7. Special Counsel, Division of Corporation Finance, M. Hughes Bates; and
8. Attorney-Adviser, Division of Corporation Finance, Kasey L. Robinson

On the topics below:

- A. Shareholder proposals on climate change, greenhouse gases, or the Paris Climate Agreement
- B. Rule 14a-8 in general

- C. Rule 14a-8(i)(7)
- D. "Micromanagement" as that term is used at the SEC
- E. Staff legal bulletins 14I and 14J

Thank you,

Lizzette

Lizzette Katilius

U.S. Securities and Exchange Commission

Office of FOIA Services, Branch Chief

202-551-7910

<https://www.sec.gov/page/foia>

EXHIBIT F



Katie Chamberlain <katie.chamberlain@sierraclub.org>

RE: 19-01844-FOIA

Katie Chamberlain <katie.chamberlain@sierraclub.org>

Mon, May 20, 2019 at 4:40 PM

To: "Katilius, Lizzette" <KatiliusL@sec.gov>

Cc: "Mandic, Frank" <MandicF@sec.gov>

Hi Lizzette,

Thank you for providing the summary. It is accurate, so please proceed with processing our request.

As we discussed on the phone we are requesting that the search be inclusive of but not limited to the 8 individuals listed. That said, we'd be happy to narrow the scope so that the request does not include all SEC staff. It seems like the division of corporation finance is most relevant, so please include all staff members from that division in your search. If conducting that search leads to other staff members or departments, please include those as well.

We look forward to receiving the responsive documents in the coming weeks. Please let us know if you can't accommodate a June 20th response deadline.

Thanks again,

Katie

[Quoted text hidden]

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Katie Chamberlain

Legal Assistant

Sierra Club Environmental Law Program

[2101 Webster St., Suite 1300](#)

[Oakland, CA 94612](#)

Phone: (415) 977-5745

Fax: (510) 208-3140

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This e-mail may contain privileged and confidential attorney-client communications and/or confidential attorney work product. If you receive this e-mail inadvertently, please notify me and delete all versions from your system. Thank you.

EXHIBIT G



Katie Chamberlain <katie.chamberlain@sierraclub.org>

RE: 19-01844-FOIA

Katie Chamberlain <katie.chamberlain@sierraclub.org>

Fri, Jun 7, 2019 at 11:12 AM

To: "Katilius, Lizzette" <KatiliusL@sec.gov>

Cc: "Mandic, Frank" <MandicF@sec.gov>

Hi Lizzette,

I want to follow up on my previous email. Please confirm receipt and let me know if we will receive the responsive documents by June 20th.

Thank you,
Katie

[Quoted text hidden]

EXHIBIT H



Katie Chamberlain <katie.chamberlain@sierraclub.org>

RE: 19-01844-FOIA

Katilius, Lizzette <KatiliusL@sec.gov>

To: Katie Chamberlain <katie.chamberlain@sierraclub.org>

Cc: "Mandic, Frank" <MandicF@sec.gov>

Mon, Jun 10, 2019 at 7:22 AM

Hi Katie, we won't know for sure until we receive the search results. Once we know the volume of potentially responsive records we will have a better idea of how long it will take to review the records and issue the final response. We will get back to you once we hear back from the program offices.

[Quoted text hidden]

EXHIBIT I



Katie Chamberlain <katie.chamberlain@sierraclub.org>

RE: 19-01844-FOIA

Katie Chamberlain <katie.chamberlain@sierraclub.org>

Tue, Jun 11, 2019 at 9:39 AM

To: "Katilius, Lizzette" <KatiliusL@sec.gov>

Cc: "Mandic, Frank" <MandicF@sec.gov>

Hi Lizzette,

Thanks for your response. When do you expect to hear back from the program offices? I understand that review of the records is dependent upon the volume, but it would be helpful to have some sort of timeline.

Thank you,
Katie

[Quoted text hidden]

EXHIBIT J



Katie Chamberlain <katie.chamberlain@sierraclub.org>

RE: 19-01844-FOIA

Katilius, Lizzette <KatiliusL@sec.gov>

Wed, Jun 19, 2019 at 9:39 AM

To: Katie Chamberlain <katie.chamberlain@sierraclub.org>

Cc: "Mandic, Frank" <MandicF@sec.gov>

Hello Katie, I wanted to circle back with you on our call from last week. If memory serves, we spoke last Friday and I let you know that we expected to receive search results this week. This morning we received the initial search results and we will start the review process. I will let you know when all the results are in so I can provide you an anticipated completion time frame.

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

Katie Chamberlain

Legal Assistant

Sierra Club Environmental Law Program

[2101 Webster St., Suite 1300](#)

[Oakland, CA 94612](#)

Phone: (415) 977-5745

Fax: (510) 208-3140

CONFIDENTIAL LEGAL COMMUNICATION/WORK PRODUCT

This e-mail may contain privileged and confidential attorney-client communications and/or confidential attorney work product. If you receive this e-mail inadvertently, please notify me and delete all versions from your system. Thank you.

EXHIBIT K



Katie Chamberlain <katie.chamberlain@sierraclub.org>

RE: 19-01844-FOIA

Katilius, Lizzette <KatiliusL@sec.gov>

Thu, Jun 20, 2019 at 10:50 AM

To: Katie Chamberlain <katie.chamberlain@sierraclub.org>

Cc: "Mandic, Frank" <MandicF@sec.gov>

Katie, today we received the balance of the searches and based on the volume of emails (over 2,000) the modified request qualifies for processing in the complex track. We typically estimate two pages per email, however, based on the file sizes, the page count is probably higher. I would like to discuss next steps with you. Please call me when you are back in the office.

Thank you,

Lizzette

Lizzette Katilius

U.S. Securities and Exchange Commission

Office of FOIA Services, Branch Chief

202-551-7910

<https://www.sec.gov/page/foia>

From: Katilius, Lizzette

Sent: Wednesday, June 19, 2019 12:40 PM

To: 'Katie Chamberlain' <katie.chamberlain@sierraclub.org>

EXHIBIT L



Katie Chamberlain <katie.chamberlain@sierraclub.org>

RE: 19-01844-FOIA

Katilius, Lizzette <KatiliusL@sec.gov>

Tue, Jun 25, 2019 at 10:28 AM

To: Katie Chamberlain <katie.chamberlain@sierraclub.org>

Cc: "Mandic, Frank" <MandicF@sec.gov>

Katie, I know you will be sending a separate email but I wanted to summarize our conversation from a few minutes ago. The purpose of the call was to convey that the email searches using your search terms generated 4,926 potentially responsive emails. Based on the amount of time we estimate to review the records the request qualifies for placement in the Complex Track. I offered to negotiate the scope in order to process your request in the faster processing track. Your colleague, Pat (I didn't catch his last name), said the request should be processed as written. The call ended with the Sierra Club indicating it would send an email about the call. If I have misstated anything please let me know, otherwise, I will wait to hear back from you.

Thank you,

Lizzette

Lizzette Katilius

U.S. Securities and Exchange Commission

Office of FOIA Services, Branch Chief

202-551-7910

<https://www.sec.gov/page/foia>

From: Katie Chamberlain <katie.chamberlain@sierraclub.org>

Sent: Monday, June 24, 2019 5:49 PM

EXHIBIT M



Katie Chamberlain <katie.chamberlain@sierraclub.org>

RE: 19-01844-FOIA

Katilius, Lizzette <KatiliusL@sec.gov>

Tue, Jun 25, 2019 at 12:44 PM

To: Katie Chamberlain <katie.chamberlain@sierraclub.org>

Cc: "Mandic, Frank" <MandicF@sec.gov>

Katie, I will be available at 4 pm today to address any additional questions you have about your request. On another note, in my last message I did not include appeal rights, so I am including them here:

If you consider the determination to place your request in the Complex Track an adverse determination you have the right to appeal to the SEC's General Counsel under 5 U.S.C. § 552(a)(6), 17 CFR § 200.80(f)(1). The appeal must be received within ninety (90) calendar days of the date of this adverse decision. Your appeal must be in writing, clearly marked "Freedom of Information Act Appeal," and should identify the requested records. The appeal may include facts and authorities you consider appropriate.

You may file your appeal by completing the online Appeal form located at https://www.sec.gov/forms/request_appeal, or mail your appeal to the Office of FOIA Services of the Securities and Exchange Commission located at Station Place, 100 F Street NE, Mail Stop 2465, Washington, D.C. 20549, or deliver it to Room 1120 at that address.

Thank you,

Lizzette

Lizzette Katilius

U.S. Securities and Exchange Commission

Office of FOIA Services, Branch Chief

202-551-7910

<https://www.sec.gov/page/foia>

EXHIBIT N



Katie Chamberlain <katie.chamberlain@sierraclub.org>

RE: 19-01844-FOIA

Katie Chamberlain <katie.chamberlain@sierraclub.org>

Fri, Jun 28, 2019 at 12:28 PM

To: "Katilius, Lizzette" <KatiliusL@sec.gov>

Cc: "Mandic, Frank" <MandicF@sec.gov>

Hi Lizzette,

I'm following up on our two phone calls on Tuesday to summarize what we discussed, ask a few questions, and outline our production request.

In our conversations you relayed the following information. Please let me know if I understood you correctly.

1. There are 4,926 responsive emails and around 9,852 responsive pages.
2. The FOIA office will need 197 hours to produce these documents based on an estimated review time of 50 pages per hour.
3. Because you estimate that our request will take over 32 hours to process, it falls into the "complex track" at the agency, which has a 3-year wait period.
4. The FOIA office does not have software with threading or deduping capabilities.

We have a few follow-up questions. First, can you point us to an SEC rule or document that describes the agency's "complex track" and the 32-hour threshold? And second, can you explain how the 3-year wait period was determined?

As we conveyed to you during our initial phone conversation, we're requesting that SEC produce 1,000 emails per month on a rolling basis starting on August 1, 2019. This schedule is reasonable based on a number of court-ordered production schedules in our FOIA cases. For example, in our case against EPA (ND CAL 18-cv-03472) the court held that EPA should produce a monthly average of 1,400 documents over a 10-month period, explaining:

FOIA requires agencies to make requested records "promptly available." 5 U.S.C. §552(a)(3)(A). Depending on the circumstances, "promptly available" typically means "within days or a few weeks of a "determination," not months or years." *Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm'n*, 711 F.3d 180, 188 (D.C. Cir. 2013) (quoting 5 U.S.C. §§ 552(a)(3)(A), (a)(6)(A)(i)).

A 3-year wait period is certainly not compliant with the "promptly available" standard and is an outlier among federal agency production timelines. While we would strongly prefer to come to a reasonable agreement with SEC instead of bringing this to court, if the SEC will not agree to this production or a substantially similar one, we will be forced to pursue legal action.

Please run this request by whomever it may concern and let us know by July 3rd if the SEC can agree to our request.

Best,
Katie

[Quoted text hidden]

EXHIBIT O



Katie Chamberlain <katie.chamberlain@sierraclub.org>

RE: 19-01844-FOIA

Katilius, Lizzette <KatiliusL@sec.gov>

Mon, Jul 1, 2019 at 12:51 PM

To: Katie Chamberlain <katie.chamberlain@sierraclub.org>

Cc: "Mandic, Frank" <MandicF@sec.gov>

Hi Katie,

Originally when we spoke I stated that we estimate two pages per email, which brought the potential email page count to just under 10,000 (4,926 emails x 2). However, based on updated information about the file size of the potentially responsive emails, that estimate is being revised to over 200,000 pages of potentially responsive email communications based on the search parameters you provided in your request. Given this volume, de-duping the emails would not remove the request from the complex track. As for the remainder of your email, we are not required to respond to questions.

The attached letter provides our formal Complex Track determination. As noted in the letter, please let us know by July 12, 2019 how you would like to proceed with your request.

Thank you,

Lizzette

Lizzette Katilius

U.S. Securities and Exchange Commission

Office of FOIA Services, Branch Chief

202-551-7910

<https://www.sec.gov/page/foia>

[Quoted text hidden]



19-01844-FOIA .pdf

235K



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

July 01, 2019

Ms. Katie Chamberlain
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612

RE: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **19-01844-FOIA**

Dear Ms. Chamberlain:

This letter responds to your request, dated April 18, 2019 and received in this office on April 19, 2019, for records from December 1, 2016 through the agency's search for records pertaining to "all records of communication with any party external to SEC" sent to or from "former agency officials or staff, including but not limited to:

1. Chairman Jay Clayton;
2. Chief of Staff to the Chairman, Lucas Moskowitz;
3. Commissioner Elad L. Roisman;
4. Commissioner Hester M. Pierce;
5. Director, Division of Corporation Finance, William Hinman;
6. Chief Counsel and Associate Director, Division of Corporation Finance, David Fredrickson;
7. Specials Counsel, Division of Corporation Finance, M. Hughes Bates; and
8. Attorney-Adviser, Division of Corporation Finance, Kasey L. Robinson."

You stated the topics subject to this request "include the following:

- A. Shareholder proposals on climate change, greenhouse gases, or the Paris Climate Agreement
- B. Rule 14a-8 in general
- C. Rule 14a-8(i) (7)
- D. "Micromanagement" as that term is used at the SEC
- E. Staff legal bulletins 14I and 14J."

Ms. Katie Chamberlain
July 01, 2019
Page Two

19-01844-FOIA

Reference is also made to our letter dated April 23, 2019, where we advised you of our decision to grant your fee waiver request.

On May 20, 2019, Lizzette Katilius called you to discuss the scope of your request. By email that same day it was agreed that the records search would not include item D, above.

We will be unable to respond to your request within the Freedom of Information Act's twenty day statutory time period, as there are unusual circumstances which impact on our ability to quickly process your request. Therefore, we are invoking the 10 day extension. These unusual circumstances are: (a) the need to search for and collect records from an organization geographically separated from this office; (b) the potential volume of records responsive to your request; and (c) the need for consultation with one or more other offices having a substantial interest in either the determination or the subject matter of the records. For these reasons, we will process your case consistent with the order in which we received your request.

We have identified over 200,000 pages of email communications that may be responsive to your request. Since the records are voluminous, if requested, we would process them on our Complex track. Under 5 U.S.C. § 552(b)(6)(D)(i) agencies may provide for multi-track processing of requests for records based on the amount of work or time (or both) involved in processing requests. The SEC's regulation implementing multi-track processing is located at 17 CFR § 200.80(d)(4).

At present we anticipate that it may take thirty-six months or more before we can begin to process a request placed in our Complex track.

If you are interested in having us place your request in our Complex Track, please write or call me by July 12, 2019 and identify the records of interest to you.

Ms. Katie Chamberlain
July 01, 2019
Page Three

19-01844-FOIA

If you have any questions, please contact me at mandicf@sec.gov. You may also contact me at foiapa@sec.gov or (202) 551-7900. You may also contact the SEC's FOIA Public Service Center at foiapa@sec.gov or (202) 551-7900. For more information about the FOIA Public Service Center and other options available to you please see the attached addendum.

Sincerely,

A handwritten signature in black ink that reads "Frank Mandic". The signature is written in a cursive, slightly slanted style.

Frank Mandic
FOIA Research Specialist

Enclosure

ADDENDUM

For further assistance you can contact a SEC FOIA Public Liaison by calling (202) 551-7900 or visiting <https://www.sec.gov/oso/help/foia-contact.html>.

SEC FOIA Public Liaisons are supervisory staff within the Office of FOIA Services. They can assist FOIA requesters with general questions or concerns about the SEC's FOIA process or about the processing of their specific request.

In addition, you may also contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. OGIS can be reached at 1-877-684-6448 or via e-mail at ogis@nara.gov. Information concerning services offered by OGIS can be found at their website at [Archives.gov](https://www.archives.gov). Note that contacting the FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an administrative appeal.

EXHIBIT P



Katie Chamberlain <katie.chamberlain@sierraclub.org>

RE: 19-01844-FOIA**Katie Chamberlain** <katie.chamberlain@sierraclub.org>

Wed, Jul 3, 2019 at 12:18 PM

To: "Katilius, Lizzette" <KatiliusL@sec.gov>

Cc: "Mandic, Frank" <MandicF@sec.gov>

Hi Lizzette and Frank,

We were surprised by the new estimate of 200,000 pages of potentially responsive documents based on our prior communications with your office. Perhaps you can explain the discrepancy. In any event, given the new estimate of 200,000 pages, we have narrowed the scope of our request - see below. Please let us know if the SEC can produce documents for this narrowed request in the simple processing track.

1. All records of communication with any party external to SEC, mentioning, describing, containing, or relating in any way to the topics listed below. We are seeking all such records sent to, sent from, produced by, or in the possession of Chairman Jay Clayton; Director, Division of Corporation Finance, William Hinman; Chief Counsel and Associate Director, Division of Corporation Finance, David Fredrickson; Special Counsel, Division of Corporation Finance, M. Hughes Bates; and Attorney-Adviser, Division of Corporation Finance, Kasey L. Robinson. The topics subject to this request include the following:

- A. Shareholder proposals on climate change, greenhouse gases, or the Paris Climate Agreement
- B. Rule 14a-8(i)(5),(i)(7),(i)(10)
- C. "Micromanagement" as used in the context of rule 14a-8(i)(7)
- D. Staff legal bulletins 14I and 14J

2. All non-exempt internal records including but not limited to memos, materials, decision memos for no-action letters, correspondence, phone logs, and visitor meeting sign-in sheets, mentioning, describing, containing, or relating in any way to the topics listed below. We are seeking all such records sent to, sent from, produced by, or in the possession of Chairman Jay Clayton; Director, Division of Corporation Finance, William Hinman; Chief Counsel and Associate Director, Division of Corporation Finance, David Fredrickson; Special Counsel, Division of Corporation Finance, M. Hughes Bates; and Attorney-Adviser, Division of Corporation Finance, Kasey L. Robinson. The topics subject to this request include the following:

- A. Shareholder proposals on climate change, greenhouse gases, or the Paris Climate Agreement
- B. Rule 14a-8(i)(5),(i)(7),(i)(10)
- C. "Micromanagement" as used in the context of rule 14a-8(i)(7)
- D. Staff legal bulletins 14I and 14J

Our date ranges for the requested records are as follows:

- December 2016 through the agency's search for records for David Fredrickson, M. Hughes Bates, and Kasey L. Robinson.
- May 2017 through the agency's search for records for Jay Clayton and William Hinman.

Thanks,
Katie

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--



**SIERRA
CLUB**

Katie Chamberlain

Legal Assistant

Sierra Club Environmental Law Program

[2101 Webster St., Suite 1300](#)

[Oakland, CA 94612](#)

Phone: (415) 977-5745

Fax: (510) 208-3140

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EXHIBIT Q



Katie Chamberlain <katie.chamberlain@sierraclub.org>

RE: 19-01844-FOIA

Katilius, Lizzette <KatiliusL@sec.gov>

Mon, Jul 8, 2019 at 10:23 AM

To: Katie Chamberlain <katie.chamberlain@sierraclub.org>

Cc: "Mandic, Frank" <MandicF@sec.gov>

Katie, once we obtained the file size for each email search we were able to provide you a more accurate page count. Even with modifying your request to the five individuals the volume is still over 200,000 pages of emails. Factors that may be contributing to the large volume are the date range (three years), possible duplicates, attachments, and/or false positives. If you have any questions please let me know.

Thanks,

Lizzette

202-551-7910

From: Katie Chamberlain <katie.chamberlain@sierraclub.org>

Sent: Wednesday, July 03, 2019 3:19 PM

To: Katilius, Lizzette <KatiliusL@SEC.GOV>

Cc: Mandic, Frank <MandicF@SEC.GOV>

Subject: Re: 19-01844-FOIA

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Lizzette and Frank,

We were surprised by the new estimate of 200,000 pages of potentially responsive documents based on our prior communications with your office. Perhaps you can explain the discrepancy. In any event, given the new estimate of 200,000 pages, we have narrowed the scope of our request - see below. Please let us know if the SEC can produce documents for this narrowed request in the simple processing track.

1. All records of communication with any party external to SEC, mentioning, describing, containing, or relating in any way to the topics listed below. We are seeking all such records sent to, sent from, produced by, or in the possession of **Chairman Jay Clayton**; Director, Division of Corporation Finance, William Hinman; Chief Counsel and Associate Director, Division of Corporation Finance, David Fredrickson; Special Counsel, Division of Corporation Finance, M. Hughes Bates; and Attorney-Adviser, Division of Corporation Finance, Kasey L. Robinson. The topics subject to this request include the following:

- A. Shareholder proposals on climate change, greenhouse gases, or the Paris Climate Agreement
- B. Rule 14a-8(i)(5),(i)(7),(i)(10)
- C. "Micromanagement" as used in the context of rule 14a-8(i)(7)
- D. Staff legal bulletins 14I and 14J

2. All non-exempt internal records including but not limited to memos, materials, decision memos for no-action letters, correspondence, phone logs, and visitor meeting sign-in sheets, mentioning, describing, containing, or relating in any way to the topics listed below. We are seeking all such records sent to, sent from, produced by, or in the possession of **Chairman Jay Clayton**; Director, Division of Corporation Finance, William Hinman; Chief Counsel and Associate Director, Division of Corporation Finance, David Fredrickson; Special Counsel, Division of Corporation Finance, M. Hughes Bates; and Attorney-Adviser, Division of Corporation Finance, Kasey L. Robinson. The topics subject to this request include the following:

- A. Shareholder proposals on climate change, greenhouse gases, or the Paris Climate Agreement
- B. Rule 14a-8(i)(5),(i)(7),(i)(10)
- C. "Micromanagement" as used in the context of rule 14a-8(i)(7)
- D. Staff legal bulletins 14I and 14J

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EXHIBIT R



July 12, 2019

U.S. Securities and Exchange Commission

Office of FOIA Services

100 F Street NE

Washington, DC 20549

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552 - Request No. 19-01844-FOIA

Dear Ms. Katilius and Mr. Mandic:

The Sierra Club respectfully rejects your proposal that we wait three years for the production of records requested in April 2019 under the Freedom of Information Act. We ask that you refer this letter to counsel, as legal action now appears to be our only recourse, but perhaps settlement negotiations could avoid the time and cost of court litigation. We refer to you both throughout this letter as "SEC."

To recount the key timeline and substance of our correspondence: SEC received our FOIA request on April 19th, 2019, waived fees on April 23rd, and e-mailed us on May 17th, 2019 (FOIA's 20-day deadline for a response) asking us for a telephone conference to discuss the request. We spoke via phone on May 20th, and expressed concern but flexibility in seeking a reasonably prompt response. SEC then conducted a search for responsive records and on June 20th, 2019 provided by email an estimate of over 2,000 potentially responsive emails and asked to speak by phone. During our June 25th telephone call, SEC relayed an estimate of 4,926 responsive emails and under 10,000 responsive pages. We proposed that SEC begin a rolling production in August 2019 of 1,000 pages per month of responsive records.

On July 1st, 2019 - 50 days after SEC received our FOIA request - SEC sent a letter stating that our request would be placed into its "complex track." Additionally, SEC stated that the estimated number of responsive documents had increased 1900% to 200,000 pages. Based on that letter, SEC stated that it anticipated a 36-month or longer wait period before it will begin processing our request. On July 3rd, 2019, in an effort to compromise with SEC, we narrowed our FOIA request by removing three custodians (SEC staff subject to our request), narrowing the date range for two custodians, and eliminating one of the original topics of our

request. Surprisingly and very oddly, SEC informed us by e-mail on July 8th, 2019 that our narrowed request would still implicate the production of 200,000 pages.

In a statement unsupported by reference to any statute or regulation, SEC's July 1st, 2019 letter appears to demand that we accede to a "complex track" response to our FOIA request that would have us wait three years for the beginning of a records production, by July 12th, 2019. By this letter, we reject that position and reserve all of our rights to enforce the Freedom of Information Act and all related laws and regulations. Again, we request that you refer this letter to counsel, and we mean no disrespect to you, but reject the positions you have conveyed on behalf of SEC.

Sincerely,

/s/ Pat Gallagher

Pat Gallagher
Legal Director
Sierra Club Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, CA 94612
pat.gallagher@sierraclub.org
(415) 977-5709

/s/ Katie Chamberlain

Katie Chamberlain
Legal Assistant
Sierra Club Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, CA 94612
katie.chamberlain@sierraclub.org
(415) 977-5745

EXHIBIT S



Katie Chamberlain <katie.chamberlain@sierraclub.org>

RE: 19-01844-FOIA

Katilius, Lizzette <KatiliusL@sec.gov>

Mon, Jul 15, 2019 at 4:51 AM

To: Katie Chamberlain <katie.chamberlain@sierraclub.org>

Cc: "Mandic, Frank" <MandicF@sec.gov>

Katie, Pat, I just wanted to remind you that during the call on June 25, 2019, I suggested that we could process your request up to 32 hours and the unreviewed portion would go into the Complex Track. However, you were not interested in that option. As for the letter you emailed on Friday, July 12, 2019, it will be forwarded to the Office of General Counsel as an appeal of our determination that your request qualifies for the Complex Track. You will receive additional information about the appeal shortly.

Thank you,

Lizzette

Lizzette Katilius

U.S. Securities and Exchange Commission

Office of FOIA Services, Branch Chief

202-551-7910

<https://www.sec.gov/page/foia>

From: Katie Chamberlain <katie.chamberlain@sierraclub.org>

Sent: Friday, July 12, 2019 4:18 PM

To: Katilius, Lizzette <KatiliusL@SEC.GOV>

Cc: Mandic, Frank <MandicF@SEC.GOV>

Subject: Re: 19-01844-FOIA

EXHIBIT T



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

July 15, 2019

Ms. Katie Chamberlain
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Appeal No. **19-00465-APPS** (19-01844-FOIA)

Dear Ms. Chamberlain:

This letter is an acknowledgment of your FOIA Appeal dated July 12, 2019 and received in this office on July 15, 2019 regarding Sierra Club, Shareholder Proposals form, from 12/01/2016 to present.

Your appeal has been assigned tracking number **19-00465-APPS**, and is assigned to the SEC's Office of the General Counsel for processing. You will receive a direct response from that office regarding a decision on your Appeal.

In the interim, **if you have questions about your appeal, you may contact the Office of the General Counsel by calling 202-551-5100**, or sending an email to foiapa@sec.gov. Please cite the Appeal tracking number provided above.

Sincerely,

Office of FOIA Services

EXHIBIT U



Katie Chamberlain <katie.chamberlain@sierraclub.org>

RE: 19-01844-FOIA

Katie Chamberlain <katie.chamberlain@sierraclub.org>

Tue, Jul 16, 2019 at 1:44 PM

To: "Katilius, Lizzette" <KatiliusL@sec.gov>

Cc: "Mandic, Frank" <MandicF@sec.gov>

Hi Lizzette and Frank,

I'm attaching a more formal appeal letter as we did not intend for the July 12 letter to be an appeal. Please refer this to the Office of General Counsel.

Thank you,
Katie

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Katie Chamberlain

Legal Assistant

Sierra Club Environmental Law Program

[2101 Webster St., Suite 1300](#)

[Oakland, CA 94612](#)

Phone: (415) 977-5745

Fax: (510) 208-3140

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Katie Chamberlain

Legal Assistant

Sierra Club Environmental Law Program

[2101 Webster St., Suite 1300](#)

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Phone: (415) 977-5745

Fax: (510) 208-3140

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Katie Chamberlain

Legal Assistant

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[2101 Webster St., Suite 1300](#)

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Phone: (415) 977-5745

Fax: (510) 208-3140

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 **Sierra Club FOIA Appeal Letter.pdf**
435K



July 16, 2019

U.S. Securities and Exchange Commission

Office of FOIA Services
100 F Street NE
Washington, DC 20549

Re: Freedom of Information Act Appeal - Request No. 19-01844-FOIA

Dear Ms. Katilius and Mr. Mandic:

Our July 12, 2019 letter was not marked as an "Appeal" since we expected the possibility of a compromise short of legal action. However, SEC treated the letter as such, so we are following up to make our appeal position more plain and to mark both this letter and the July 12 letter (Attachment A) as "Appeal" documents. A copy of the original request and the adverse determination are enclosed as Attachments B and C, respectively.

Our July 12 letter sets out the pertinent time frames and events that led to our rejection of SEC's offer to put our Freedom of Information Act request into a "complex track" with a three-year response time. Nothing in the SEC's communications cited any legal authority for this kind of delay. As you know, the statute requires an initial response within twenty days and a "prompt" production of non-exempt records. 5 U.S.C. § 552(a)(3)(A). SEC now violates these requirements by asking the Sierra Club to acquiesce to a three-year delay.

The D.C. Circuit repeatedly emphasizes the importance of timely record production under FOIA, as a matter of compelling public interest. As the court held in *Payne Enterprises, Inc. v. U.S.*, 837 F.2d 486, 494 (D.C. Cir. 1988), untimely FOIA disclosures defeat the statute's purpose, noting that "stale information is of little value." See also *Judicial Watch, Inc. v. United States Department of Homeland Security*, 895 F.3d 770 (D.C. Cir. 2018).

As we offered to SEC, the Sierra Club would entertain a rolling production of records responsive to our FOIA request, presuming we were assured of diligent agency collection and production protocols. Absent such a compromise, we will seek judicial intervention.

Thank you for your attention to this matter.

Sincerely,

/s/ Pat Gallagher

Pat Gallagher
Legal Director
Sierra Club Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, CA 94612
pat.gallagher@sierraclub.org
(415) 977-5709

/s/ Katie Chamberlain

Katie Chamberlain
Legal Assistant
Sierra Club Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, CA 94612
katie.chamberlain@sierraclub.org
(415) 977-5745

EXHIBIT V



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
THE GENERAL COUNSEL

Stop 9612

September 24, 2019

Mr. Pat Gallagher
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612

Re: Appeal, Freedom of Information Act Request Nos. 19-01844-FOIA, and
designated on appeal as No. 19-00465-APPS

Dear Mr. Gallagher:

This responds to your Freedom of Information Act (FOIA) appeal of the FOIA Office's decision to place your April 19, 2019 FOIA request¹ in the Commission's "Complex Track" for review. By letter dated July 1, 2019, the FOIA Office advised you that it was invoking a ten day extension since it was unable to respond to your request within the FOIA's twenty day statutory period due to unusual circumstances. The FOIA Office also informed you that its search identified approximately 200,000 pages of email records that may be responsive to your request. The FOIA Office estimated that it would take thirty-six months or more before it can begin to process a request placed in the Complex track.

On July 15, 2019, you filed this appeal. You argue that after numerous communications with the FOIA Office in attempts to narrow your request, the FOIA Office still placed you in the Complex Track "[i]n a statement unsupported by reference to any statute or regulation." You also "reject [the Commission's] proposal that we wait three years for the production of records." I have reviewed your appeal and it is denied.

Complex Track Processing

Under the Commission's FOIA regulations, a request may be placed in the FIFO system for review and processing where, due to the quantity of records, time and/or work involved, the

¹ Your request seeks "all records of communication with any party external to the SEC" sent to or from "former agency officials or staff, including but not limited to: Chairman Jay Clayton; Chief of Staff to the Chairman Lucas Moskowitz; Commissioner Elad L. Roisman; Commissioner Hester Pierce; Director, Division of Corporate Finance William Hinman; Chief Counsel and Associate Director, Division of Corporate Finance M. Hughes Bates; and Attorney-Advisor, Division of Corporate Finance Kasey L. Robinson." You stated the topics subject to this request "include the following: 1) Shareholder proposals on climate change, greenhouse gases, or the Paris Climate Agreement; 2) Rule 14a-8 in general; 3) Rule 14a-8(i)(7); 4) 'Micromanagement' as that term is used at the SEC; and 5) staff legal bulletins 14I and 14J."

review of the records cannot be completed within 20 business days.² Such requests are considered “voluminous” under the SEC’s FOIA regulations. The Commission’s regulations describing what constitutes “voluminous” records subject to processing under the FIFO track are predicated on section 552(a)(6)(D)(i) of the FOIA which allows agencies to “provid[e] for multitrack processing of requests based on the amount of work or time (or both) involved in processing requests.”³

In this case, the FOIA Office informed you that it identified approximately 200,000 pages of email records that would need to be reviewed, redacted if appropriate, and prepared for reproduction if necessary. Given the quantity of the records to be reviewed and the anticipated staff time involved, the FOIA Office reasonably concluded that your request seeks “voluminous” records and should be processed under the Commission’s FIFO track in accordance with Rule 80(d)(5)(ii). Thus, I find the FOIA Office properly determined that the processing of your FOIA requests under the FIFO track was appropriate.

I strongly suggest that you work with the FOIA Office in another effort to ensure that the search terms used to search for the requested records are tailored to the specific search terms that you desire, in an effort to minimize the volume of records. The search terms used to search email communications of the specified SEC staff were: “shareholder proposals on climate change,” “shareholder proposals on greenhouse gases,” “Rule 14a-8,” “Rule 14a-8(i)(7),” “staff legal bulletin 14I,” and “staff legal bulletin 14J.” In our view, these search terms are not sufficiently tailored to limit the search to the specific categories of documents you appropriately seek.

You have the right to seek judicial review of my determination with respect to the FIFO processing of your requests by filing a complaint in the United States District Court for the District of Columbia or in the district where you reside or have your principal place of business.⁴ Voluntary mediation services as a non-exclusive alternative to litigation are also available through the National Archives and Records Administration’s Office of Government Information Services (OGIS). For more information, please visit www.archives.gov/ogis or contact OGIS at ogis@nara.gov or 1-877-684-6448. If you have any questions concerning my determination, please contact Mark Tallarico, Senior Counsel, at 202-551-5132.

For the Commission
by delegated authority,



Richard M. Humes
Associate General Counsel

² See 17 C.F.R. § 200.80(d)(5)(ii).

³ 5 U.S.C. § 552(a)(6)(D)(i).

⁴ See 5 U.S.C. § 552(a)(4)(B).